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10 JLV EQUIPMENT, INC.

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12 UNITED STATES DISTRICT COURT  
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14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN JOSE DIVISION  
17

18 NATIONAL UNION FIRE INSURANCE  
19 COMPANY OF PITTSBURGH, PA,

20 Plaintiff,

21 v.

22 RESOURCES DEVELOPMENT SERVICES,  
23 INC., et al.,

24 Defendants.

Case No. CV 10-01324 JF (PVT)

25 **NOTICE OF JOINDER BY DEFENDANT**  
26 **JLV EQUIPMENT, INC. IN PENDING**  
27 **MOTION TO DISMISS THE SECOND**  
28 **AMENDED COMPLAINT AND**  
**MOTION TO STRIKE**

Judge: Hon. Jeremy Fogel  
Date: April 15, 2011  
Time: 9:00 a.m.  
Ctrm: 3  
Floor: 5

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant JLV Equipment, Inc. ("JLV") hereby joins in the pending Motion to Dismiss and Motion to Strike filed by Defendant Environmental Resource Recovery, Inc. (d/b/a and sued as Valley Recycling) (hereinafter "Valley Recycling") on January 31, 2011. These motions both relate to Plaintiff's Second Amended Complaint. This matter will be heard by this Court on Friday, April 15, 2011 at 9:00 a.m., or as soon thereafter as the matter can be heard, in Courtroom No. 3 on the Fifth Floor of the United States Courthouse located at 280 South 1st Street in San Jose, California 95113. JLV requests that its joinder in these motions be considered at this hearing.

## I. INTRODUCTION

JLV moves the Court (1) to dismiss all the claims stated in the Second Amended Complaint as against JLV, and (2) to strike the claim for punitive damages. JLV's motions are based on the same grounds as are being argued by Valley Recycling in its motions for the same relief.

## II. REQUEST FOR JUDICIAL NOTICE AND INCORPORATION BY REFERENCE

In the interest of judicial economy and efficiency, JLV hereby incorporates by reference the Memorandum of Points and Authorities in Support of Defendant Valley Recycling's Motion to Dismiss Plaintiff's Second Amended Complaint and Motion to Strike (Filed January 31, 2011; Document Nos. 147) and the accompanying Request for Judicial Notice (Filed January 31, 2011; Document No. 148), because the matters set forth therein apply with equal force to JLV. The balance of this joinder briefly discusses the facts as they pertain to JLV.

## III. FACTUAL BACKGROUND

JLV Equipment, Inc. is a California corporation based in San Mateo County that, among other things, operates a trucking and hauling business.

JLV's sole connection to these proceedings is that it formerly contracted with a landfill broker named RDS Development Services, Inc. ("RDS") to dispose of various forms of material at facilities operated by Waste Management Corporation ("WMC"), including the Kirby Canyon Landfill.

JLV was billed directly by RDS for the dump charges incurred during the applicable billing period. JLV paid these dump charges directly to RDS in the ordinary course of its business. JLV denies being part of any sort of conspiracy or fraud with respect to these charges.

The Second Amended Complaint contains no specific allegations against JLV. JLV is only addressed generally, and on information and belief, as one of the "trucking company defendants."

Further, as pled by Plaintiff, JLV only dumped materials at the Kirby Canyon Landfill on eight days in September 2006. (See Attachment 11 to Plaintiff's First Amended Complaint,

1 which is incorporated by reference in Plaintiff's Second Amended Complaint.) Significantly, all  
2 of these occasions occurred **before** the alleged events set forth in Paragraphs 70 and 71 of the  
3 Second Amended Complaint.

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5 **IV. CONCLUSION**

6 For the same reasons set forth in Defendant Valley Recycling's Memorandum of Points  
7 and Authorities, JLV requests (1) that the Second Amended Complaint be dismissed or restated  
8 more definitely as to JLV, and that Plaintiff's improperly repeated request for punitive damages  
9 set forth in Paragraph 89 of the Second Amended Complaint be stricken.

10 DATED: February 9, 2011 SEDGWICK, DETERT, MORAN & ARNOLD LLP  
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12 By: /s/ Gregg N. Dulik  
13 Gregg N. Dulik  
14 Attorneys for Defendant  
15 JLV EQUIPMENT, INC.  
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